

*****FOR PUBLICATION*****

OPINION OF
HIFO, J., CONCURRING AS TO PART VI AND JOINING IN ALL OTHER PARTS

I concur in the result reached as to Part VI regarding intentional infliction of emotional distress. The trial judge did not err in dismissing the claim because, as was argued by Defendant below, the facts relied upon by Plaintiff did not as a matter of law reach the requirement of “outrageous conduct”. This requirement is the same in both the Restatement (Second) of Torts and previous Hawaii decisional law. Thus, the trial court’s decision should be affirmed, even though it was based on a different and incorrect reason.

That notwithstanding, I join in Part VII because it is useful to clarify the elements of the tort of intentional infliction of emotional distress to guide trial courts and future litigants. Adoption of the Restatement’s formulation provides such clarification. It also creates greater symmetry as between the separate torts of intentional and negligent infliction of emotional distress, not requiring proof of physical injury where the tortious act was outrageously intentional or reckless.

I also join in Parts I, II, III, IV, V, and VIII.